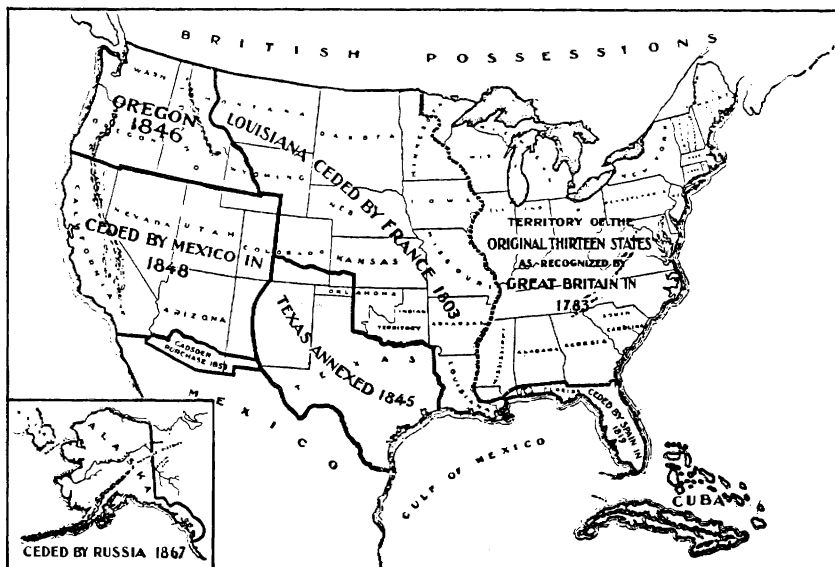


The Constitution and Territorial Expansion

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In 1787 the United States claimed a territory, just under 900,000 square miles, that extended from the Atlantic to the Mississippi, from the Spanish Floridas on the Gulf of Mexico to the line of the Great Lakes on the north. Within a century the nation had grown fourfold, and its territory now stretched to the Pacific, spread from Mexico to Canada, and included the vast region of Alaska.

This immense expansion was accomplished under the Constitution of 1787 without requiring any amendments. Perhaps more interesting is the

fact that the Constitution says nothing about the right of the Republic to acquire territory because, as Alfred H. Kelly wrote in *The American Constitution*, the framers simply "neglected to make any statement on the point."

Skillful Politicians

The men who gathered in Philadelphia to write a new constitution were a group of able, experienced, pragmatic politicians, many of whom had been prominent in public life since the days of the Declaration and before. They

were skillful politicians, able and willing to find accommodations and make adjustments. Their success in finding solutions and making compromises is registered in the fact that Madison recorded only three of the delegates as unwilling to sign the completed document.

In their effort to broaden and strengthen the central government, the framers seemed in no mood to disturb decisions that had already been reached about such important matters as the creation of a public domain to be managed by the central government for the common good, and acceptance of the proposition that new States formed in the western territories on the lands ceded to the central government by landed States would be admitted into the Union on a basis of equality with the original States.

Sections 3. and 4. of Article IV, among other things, provide that Congress has the power to admit new States and to make the rules and regulations respecting the territory and other property of the United States. The United States also guaranteed to every State a republican form of government.

Territorial Expansion

For a decade and a half under the new Constitution no particular difficulties were encountered in westward expansion. Territorial boundaries as defined in the 1783 Treaty of Paris were reaffirmed by treaties with England and Spain in the mid-1790's.

Two states, Kentucky and Tennessee, became the first admitted from

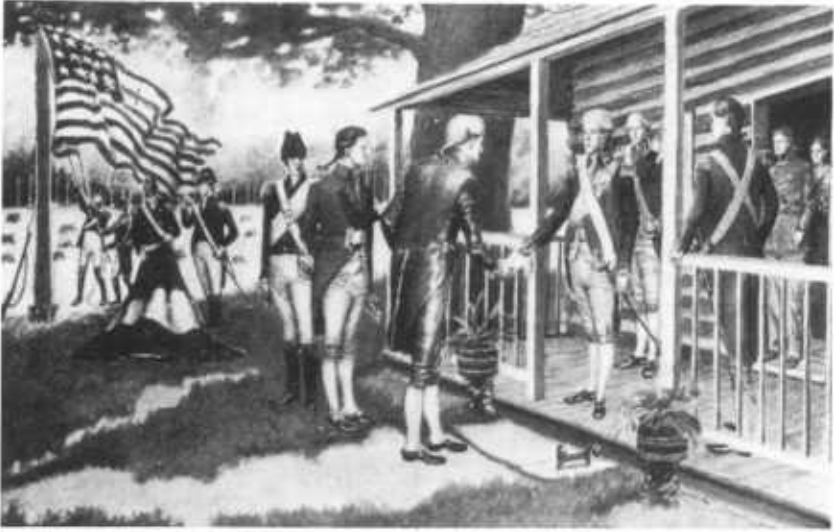
west of the Appalachian Mountains; territorial organization as provided under the Northwest Ordinance of 1787 proceeded to the point that the first new State from the land north of the Ohio River was about to become a State, and the terms of the Northwest Ordinance, without the prohibition of slavery, had served as the basis for organizing the Mississippi territory. The land system, launched by the Ordinance of 1785, with provision for the rectangular survey of the land and arrangements to dispose of it, continued to unfold.

Louisiana Purchase

Matters changed when Spain closed the Mississippi River to American commerce in 1802 and word reached Washington that France had obtained Louisiana from Spain. This led to the purchase of Louisiana in 1803 and provided the first serious test of whether the new Republic could expand beyond its original boundaries under the Constitution.

Most Americans enjoy the story of this vast acquisition, largely no doubt because it is an account of rare good fortune in enlarging and enriching the Republic, thanks to what appears to be the capricious behavior of a European ruler. Pleasure in the story is not lessened because of the irony involved when holders of strong ideological positions found it necessary to reverse themselves in public view.

The facts are relatively simple if somewhat unbelievable. In 1800 Napoleon Bonaparte had arranged for Spain to return Louisiana secretly to



France transfers the Louisiana Territory to the United States in 1803. (Pictorial History of the Louisiana Purchase by Murat Halstead)

France. It was to serve a part in the reestablishment of a French colonial empire. The plan went badly. Napoleon lost interest in the project.

Meanwhile, President Thomas Jefferson was much disturbed by the closure of the Mississippi and return of Louisiana to France. He directed Robert R. Livingston, the partly deaf American minister to France, to try to buy New Orleans and West Florida, or, failing that, other landing rights on the lower Mississippi and Gulf Coast. In March 1803, he named James Monroe special envoy and sent him to France to assist in the negotiations.

Livingston's repeated proposals and entreaties to Bonaparte and his ministers were ignored. Then early in April Napoleon instructed his ministers to

find out what Livingston would offer for all of Louisiana, not just New Orleans and West Florida. On April 11 Talleyrand casually asked Livingston what the United States would pay for the whole of Louisiana.

His first startled response was that the United States did not want the whole of Louisiana. But he recovered quickly. Monroe reached Paris the next day and after some haggling the Ambassador and special envoy arranged for the purchase of Louisiana. It was an amazing agreement between Bonaparte's ministers and the Americans who went some distance beyond their instructions. Livingston and Monroe had been directed to obtain New Orleans and West Florida for up to \$10 million. They agreed to pay over \$15 million for all of Loui-

siana. The treaty promised that the inhabitants of the ceded territory would be incorporated into the Union of the United States as soon as possible, "with all the rights, advantages, and immunities of citizens of the United States."

This was something that the Secretary of State had said should not be promised, but Livingston and Monroe agreed to it. To some, the transaction appeared to be one in which the Americans had no authority to buy what the French ministers had no right to sell.

The Great Bargain

The treaty offered Americans a great bargain, but it also put a severe strain on the Constitution as Jefferson and his followers had viewed it. For years Jeffersonian Republicans had been denouncing the Federalists for interpreting the Constitution liberally to suit their purposes. Now it was Jefferson who must seek a flexible interpretation.

Initially he considered proposing an amendment that would explicitly authorize such acquisition of territory, and even tried to find satisfactory phrasing, but he was warned that haste was needed lest Bonaparte change his mind. He was persuaded to acquiesce, confident, as he wrote a friend, that the good sense of the country would make corrections in the Constitution if evil effects threatened.

The Treaty involved an appropriation, so both houses of Congress, each controlled by Republicans, acted

on the measure. The Nation was treated to the view of Republicans arguing forcefully for a liberal construction of the Constitution and the Federalists standing firm against making a "blank paper" of the document. But the debate was soon over and the treaty approved by a vote of 90 to 25 in the House, by 26 to 5 in the Senate. Ideology could not stand against so great a bargain.

Congress and the administration next turned to the business of arranging a proper transfer of the territory, and then to its government. There was some uncertainty about the status of the new territory. Was it a colony, to be ruled by the central government, or was it to be viewed as an enlargement of the public domain, a region in which new States would one day be formed under the general provisions in the Northwest Ordinance?

The first government provided for Louisiana in 1804 seemed to view it as a dependent colony. The president of the United States was authorized to appoint the governor, the legislative council, and the judiciary. This arrangement worked badly and a year later Louisiana was granted an elective legislature and in other ways brought into the territorial system. Moreover, unclaimed land became part of the public domain to be covered in time by the rectangular survey and the established land policy.

Admitted to the Union

In 1812 Congress admitted Louisiana to the Union on a basis of equality with the other States. Both the system

of territorial government and the land system had been extended to the acquired territory without placing a noticeable strain on the Constitution.

After the absorption of Louisiana, the United States went on to acquire the Floridas, Texas, the Oregon country, California and the other southwest territories, the Gadsden and Alaska Purchases, and finally, in 1898, Hawaii without notable constitutional difficulties. In 1810, urged on by American settlers, that part of West Florida lying west of the Pearl River was attached to Louisiana Territory by Presidential Proclamation. President Madison asserted that this territory was widely known to be part of Louisiana and the time had come for the United States to accept responsibility for governing it.

The Governor of Louisiana was directed to assume control. The Spanish Government complained but got nowhere. Two years later Congress passed a law declaring that the lands lying between the Pearl and the Perdido were part of the United States and attached to Mississippi Territory. Again Spain protested but did nothing. Then in 1819 Spain agreed to transfer East Florida to the United States.

Residents of Florida were promised full rights of citizenship. It took 2 years before the ratification was completed and the United States took possession. Initially Florida's government differed little from the one first provided for Louisiana, in that the president appointed the governor, legislative council and judiciary. This was changed within a few years to

provide for an elective legislature, and the laws governing the survey and sale of the public domain and territorial government were spread over Florida.

Treaties that Followed

In the expansion following acquisition of Florida, all went relatively well. Texas, held out of the Union because of mounting sectional conflict, entered the Union in 1844 with full statehood on the basis of a joint resolution and with control over its own public land. The areas brought into the Union in consequence of the Oregon Treaty, the Southwest Cession, Gadsden Purchase and Alaska Purchase were incorporated into the territorial system.

After the Louisiana Purchase, new territory could be acquired and attached to the Republic without provoking much constitutional debate. But from the time of the Missouri Compromise of 1820 until the Civil War the increasingly bitter sectional conflict made it more and more difficult for the Congress to exercise its explicit constitutional power to admit new States. In the case of Alaska, governmental development was as slow as population growth. The rectangular land surveys and the land system in general were spread over these acquired lands with no difficulty.

The Constitution contained no statement about territorial expansion, but neither did it contain any "parchment barriers," a term used by John Randolph of Virginia in the debate over the Louisiana Purchase.